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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

CHRISSIE CARNELL BIXLER; CEDRIC
BIXLER-ZAVALA; JANE DOE #1; MARIE
BOBETTE RIALES; and JANE DOE #2,

Plaintiffs,

v.

CHURCH OF SCIENTOLOGY
INTERNATIONAL; RELIGIOUS
TECHNOLOGY CENTER; CHURCH OF
SCIENTOLOGY CELEBRITY CENTRE
INTERNATIONAL; DAVID MISCAVIGE;
DANIEL MASTERSON; and DOES 1 – 25,

Defendants.

CASE NO.: 19STCV29458

*Assigned to Hon. Steven J. Kleifield,
Dept. 57*

**PLAINTIFFS' OPPOSITION TO
DEFENDANT DANIEL MASTERSON'S
MOTION TO STRIKE PORTIONS OF
PLAINTIFFS' FIRST AMENDED
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES**

DATE: 09/04/2020

TIME: 8:30 A.M.

DEPT.: 57

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: Plaintiffs Chrissie
Carnell Bixler, Cedric Bixler-Zavala, Jane Doe #1, Marie Bobette Riales, and Jane Doe #2
("Plaintiffs") submit this Opposition to Defendant, Daniel Masterson's Motion to Strike Portions
of Plaintiffs' First Amended Complaint.

TABLE OF CONTENTS

I. Introduction.....	1
II. Argument	1
A. All portions of Plaintiffs' Complaint related to sexual assault on the part of Masterson and a subsequent police investigation are relevant and material to the Plaintiffs' claims, and cannot be stricken.	3
1. Allegations of sexual assault are relevant and material to Plaintiffs' claims for Stalking and should not be stricken.....	4
2. Allegations of sexual assault are relevant and material to Plaintiffs' claims for Physical and Constructive Invasion of Privacy and should not be stricken.....	5
3. Allegations of sexual assault are relevant and material to Plaintiffs' claims for Intentional Infliction of Emotional Distress and should not be stricken.	7
4. Allegations of sexual assault are relevant and material to Cedric Bixler-Zavala's claim for Loss of Consortium and should not be stricken.....	7
5. Masterson's Motion to Strike cannot be granted on the basis of hypothetical prejudice that may or may not be created by the material allegations of sexual assault.....	8
B. Plaintiffs' prayers for injunctive relief, punitive/exemplary damages, attorney's fees, and treble damages are supported by the causes of action pleaded in the complaint and should not be stricken.	9
III. Conclusion	14

TABLE OF AUTHORITIES

Cases

<i>Allstate Ins. Co. v. Loo</i> (1996) 46 Cal.App.4th 1794, 1797-98	20
<i>Beck v. Cty. of San Mateo</i> , 154 Cal. App. 3d 374, 379 (1st Dist. 1984).....	9
<i>Blegen v. Sup. Ct.</i> (1981) 125 Cal.App.3d 959, 962–963, 178 Cal.Rptr. 470	16
<i>Burks v. Poppy Construction, Co.</i> (1962) 57 Cal.2d 463, 467)	17
Cal. Evid. Code § 352	14
<i>Clauson v. Sup. Ct.</i> (1998) 67 Cal.App.4th 1253, 1255	6
<i>Coll. Hosp., Inc. v. Sup. Ct.</i> (1994) 8 Cal.4th 704, 721, 34 Cal.Rptr.2d 898, 882 P.2d 894. ...	17
<i>Courtesy Ambulance Serv. v. Sup. Ct.</i> (1992) 8 Cal.App.4th 1504, 1519	6
<i>Delano Farms Co. v. Cal. Table Grape Comm'n</i> (E.D. Cal. 2009) 623 F.Supp.2d 1144, 1183	19
<i>Grieves v. Sup. Ct.</i> (1984) 157 Cal.App.3d 159, 166, 203 Cal.Rptr. 556.....	16
<i>People v. Disa</i> , 1 Cal. App. 5 th 654 (2016).....	14
<i>Perkins v. Sup. Ct.</i> (1981) 117 Cal.App.3d 1, 6-7	17
<i>PH II, Inc. v. Sup. Ct.</i> (1995) 33 Cal.App.4th 1680, 1683.....	6
<i>Samuels v. Singer</i> (1934) 1 Cal.App.2d 545, 548.....	18
<i>See Clements v. T. R. Bechtel Co.</i> (1954) 43 Cal.2d 227, 242.....	6
<i>Unt'd Firefighters of Los Angeles v. City of Los Angeles</i> , 231 Cal. App. 3d 1576, 1584 (1991) ...	19
<i>Vaccaro v. Kalman</i> (1998) 63 Cal.App.4th 761, 768	6
<i>Walton v. Guinn</i> (1986) 187 Cal.App.3d 1354, 1357, fn. 1.....	18

Statutes

Cal. Civ. Code § 1708.7.....	9
Cal. Civ. Proc. Code § 1021.5	20
Cal. Civ. Proc. Code § 436	6
Cal. Civ. Proc. Code § 437	6
Cal. Civ. Proc. Code § 526.	16
Cal. Civ. Proc. Code §431.10	6
Cal. Civil Code § 52.5.....	20
Civ.Code, § 3294, subd. (a)	17

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Code Civ. Proc. § 431.10(b). 8

Other Authorities

Well & Brown, *Civil Procedure Before Trial* § 7:197, at 7-65 (Rutter Group 2005) 6

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I. Introduction

The requests in Defendant Masterson's Motion to Strike go too far. Masterson wants this Court to slash away huge chunks of essential and relevant information within the Plaintiffs' Complaint while at the same time somehow arguing that Plaintiffs' First Amended Complaint does not contain enough facts to sustain viability. Here, neither the facts nor the law are on Masterson's side.

The portions of Plaintiffs' First Amended Complaint (hereinafter "FAC") that Masterson seeks to strike are wholly material and relevant to each of the Plaintiffs' claims. These matters are not included to "garner media attention." Media attention has long since been garnered through no action of the Plaintiffs but rather, Defendant Masterson's own conduct and public comments. The allegations of sexual assault by Masterson, and the subsequent police investigation of Masterson, underlie, frame, and impact each of the Plaintiffs' claims. These allegations are in fact pertinent to Plaintiffs' claims for stalking, invasion of privacy, IIED, and loss of consortium, because the sexual assaults and police investigations *lead to the existence* of the other causes of action.

The assaults, and the police investigations of the assaults, provoked Masterson to stalk and harass each Plaintiff. To strike these allegations would be to deny the Plaintiffs the ability to put their claims into a factual context, and unfairly render their claims as unsupported, out of context, and random. All allegations of sexual assault, and references to corresponding police investigations of Masterson, are entirely relevant and material to each of the Plaintiffs' claims and cannot be stricken. They speak to all elements of Plaintiffs' action, including, but not limited to motive, liability and damages.

Plaintiffs' prayers for injunctive relief and exemplary damages, attorney's fees, and treble damages are supported by the allegations and statutes set forth in the Complaint. These prayers for relief can likewise not be stricken. Plaintiffs respectfully request that this Court overrule Masterson's Motion to Strike Portions of the Plaintiffs' First Amended Complaint in its entirety.

II. Argument

A motion to strike is proper only to strike "irrelevant, false, or improper matter inserted in any pleading," or any pleading or part thereof "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." Cal. Civ. Proc. Code § 436. Similar to a demurrer, the grounds for a motion to strike must appear "on the face of the challenged pleading"

1 or “from any matter of which the court is required to take judicial notice.” Cal. Civ. Proc. Code §
2 437. The court must read allegations subject to strike “as a whole, all parts in their context, and
3 assume their truth.” *Clauson v. Sup. Ct.* (1998) 67 Cal.App.4th 1253, 1255 [citing, *Courtesy*
4 *Ambulance Serv. v. Sup. Ct.* (1992) 8 Cal.App.4th 1504, 1519)).

5 Motions to strike are disfavored. *See Well & Brown, Civil Procedure Before Trial* §
6 7:197, at 7-65 (Rutter Group 2005). The policy of the law is to construe the pleadings “liberally...
7 with a view to substantial justice.” Cal. Civ. Proc. Code § 436.

8 Notably, courts have stressed that motions to strike should be used in a “cautious and
9 sparing” manner. *See PH II, Inc. v. Sup. Ct.* (1995) 33 Cal.App.4th 1680, 1683 [“We have no
10 intention of creating a procedural ‘line item veto’ for the civil defendant.”].) Where portions of a
11 complaint subject to strike are essential to the plaintiff’s cause of action, it is error to grant
12 a motion to strike. *See Clements v. T. R. Bechtel Co.* (1954) 43 Cal.2d 227, 242. If a defect is
13 capable of cure, the court must allow leave to amend; refusal to grant leave under such
14 circumstances constitutes abuse of discretion. *See Vaccaro v. Kalman* (1998) 63 Cal.App.4th 761,
15 768 (trial court abused its discretion by denying leave to amend where stricken defect was capable
16 of cure).

17 Cal. Civ. Proc. Code §431.10 provides:

18 “(a) A material allegation in a pleading is one essential to the claim or defense and which
19 could not be stricken from the pleading without leaving it insufficient as to that claim or defense.

20 (b) An immaterial allegation in a pleading is any of the following:

21 (1) An allegation that is not essential to the statement of a claim or defense;

22 (2) An allegation that is neither pertinent to nor supported by an otherwise sufficient claim
23 or defense;

24 (3) A demand for judgment requesting relief not supported by the allegations of the
25 complaint or cross-complaint;

26 (c) An “immaterial allegation” means irrelevant matter as that term is used in Section 436.

27 Under the standards noted above, Defendant Masterson has failed to demonstrate the
28 merit in his motion to strike the allegations of sexual assault, subsequent police investigations,
and prayers for relief for injunctive relief, exemplary damages, attorney’s fees, and treble
damages in Plaintiff’s First Amended Complaint. Because all sexual assault allegations and

1 mentions of the subsequent police investigation are relevant, material, and essential to each of the
2 Plaintiffs' claims, Masterson's Motion to Strike should be denied.

3 **A. All portions of Plaintiffs' Complaint related to sexual assault on the part of**
4 **Masterson and a subsequent police investigation are relevant and material to**
5 **the Plaintiffs' claims, and cannot be stricken**

6 This case is about harassment and stalking, as Masterson states in his Motion to Strike.
7 (See Defendant Masterson's Motion to Strike Portions of Plaintiffs' First Amended Complaint
8 attached as Exhibit "A.") But this case is *also* about Masterson's sexual assaults on each Plaintiff,
9 and the subsequent police investigations of Masterson. Plaintiffs' First Amended Complaint (Ex.
10 B), includes references to Masterson's sexual assaults and the corresponding police investigations
11 for good reason: each pleaded claim arises out of these sexual assaults and police investigations.
12 Although the claims are not *for* sexual assault, the facts and events surrounding the assaults gave
13 rise to each of the Plaintiffs' causes of action. Moreover, the sexual assaults speak to the harm
14 that the harassment and stalking has exacerbated/caused. It is impossible to talk about the injuries
15 suffered by these women relating to the harassment and stalking without taking into account that
16 one of the people committing the stalking and harassment is the same person who sexually
17 assaulted them.

18 Masterson asks this Court to strike portions of paragraphs 1, 15, 58, 73, 74, 75, 81, 84, 85,
19 86, 88, 89, 104, 126, 154, 158, 159, 161, 165, 175, 176, 191, 251, 258, 259, 270, 273, 279, 285,
20 and 293, due to references to his sexual assaults or his police investigation.

21 Masterson also asks to strike paragraphs 64, 67, 68, 69, 70, 71, 72, 78, 79, 80, 82, 91, 106,
22 137, 138, 139, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 156, 157, 160,
23 164, 169, 170, 177, 179, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 216, 240, 241, 242,
24 243, 244, 246, 247, and 248 in their entirety due to references to his sexual assaults or his police
25 investigation.

26 An **immaterial or irrelevant allegation** is one that is **not essential** to the statement of a
27 claim or defense, or an allegation that is neither pertinent to, nor supported by, an otherwise
28 sufficient claim or defense, or a demand for judgment requesting relief not supported by the
29 allegations in the pleading. Code Civ. Proc. § 431.10(b).

30 There is no such irrelevant or immaterial matter in the instant pleading. Masterson simply
31 moves to strike allegations in an attempt to sanitize the factual record of what has occurred in this

1 case and change the factual context of the conditions which gave rise to the Plaintiffs' claims and
2 damages. All allegations, when read as a whole, support each cause and claim. The sexual assault
3 references are crucial and essential to the pleaded claims and damages. Masterson therefore has
4 no cause to strike any of the above paragraphs in full or in part. His requests should be overruled
5 accordingly.

6 **1. Allegations of sexual assault are relevant and material to Plaintiffs' claims and**
7 **damages for Stalking and should not be stricken**

8 Masterson indecorously molds California law to suit his position to conclude that because
9 *the elements* of a Stalking claim *do not include sexual assault*, that the allegations of sexual assault
10 are "irrelevant" to Plaintiffs' claims for Stalking. Masterson further claims that these allegations
11 were included only for "improper public relations purposes." Masterson is wrong, and misuses
12 the standard for a motion to strike. Just because sexual assault is not *an element* of a civil Stalking
13 claim under Cal. Civ. Code § 1708.7 does not mean that sexual assault allegations are
14 automatically irrelevant.

15 Masterson wants to strictly construe the pleadings and argues that each claim should have
16 "sexual assault" as an actual element. But California courts have adopted a liberal construction
17 of pleadings, drawing all reasonable inferences **in favor** of the allegations therein." *Beck v. Cty.*
18 *of San Mateo*, 154 Cal. App. 3d 374, 379 (1st Dist. 1984).

19 The sexual assault allegations **are necessary** to include in order for the Plaintiffs to
20 establish *why* Masterson started stalking them. The sexual assaults lay out the basis for the
21 stalking claim, because the stalking was directly spurred by the sexual assaults on Plaintiffs and
22 the subsequent police investigations of Masterson. Striking the allegations as to this claim would
23 leave the claim out of context, and less factually supported. But this court must take the complaint
24 and its allegations in context, as a whole, and as true; the sexual assault claims support and explain
25 the Stalking claim, and so they cannot be stricken.

26 Specifically, Plaintiff Bixler pleaded that right after she reported **the sexual assault**, that
27 Masterson and the Institutional Defendants then began to harass, surveil, and abuse her pursuant
28 to the Scientology code that is "Fair Game". The sexual assault allegations are material and
foundational to Bixler's Stalking claim.

Jane Doe #1 pleaded that as a result of reporting her **sexual assault** to police, she was
ultimately declared a "suppressive person" by Master and the Institutional Defendants, and that

1 after again contacting police regarding her sexual assault, the Defendants carried out “Fair Game”
2 against Jane Doe #1 and began to harass, surveil, and stalk her. (*Complaint* at ¶¶ 170-172).

3 Jane Doe #2 pleaded that once she disclosed the **sexual assault** by Masterson to police,
4 the Defendants then began to subject her to “Fair Game”, stalking, harassing, and surveilling her.
5 (*Complaint* at ¶248-49). The reason that the Defendants sought to silence Jane Doe #2, as well as
6 each other Plaintiff, was due to each Plaintiff’s decision to disclose Masterson’s sexual assaults
7 to police.

8 Plaintiff Riales pleaded that once she reported Masterson’s sexual assaults to the LAPD,
9 the Defendants then initiated “Fair Game” against her. (*Complaint* at ¶ 216-17).

10 Furthermore, since the filing of the FAC and Masterson’s Motion to Strike, he has been
11 charged in the sexual assault of three of the four Plaintiffs named in the FAC. Plaintiffs were
12 never alone in alleging that Masterson was a rapist, but they are now joined by law enforcement
13 officials in the County of Los Angeles who have determined not only to charge Masterson but
14 that they can prove their allegations that Masterson is a rapist beyond a reasonable doubt.
15 Additionally, striking the allegations at issue would remove the context of the harm suffered by
16 the Plaintiffs as well, namely, that they were harassed, stalked and intimidated by the very person
17 who had previously sexually assaulted them. The facts of the sexual assaults are essential
18 components of the total harm suffered by these women as a result of the stalking, harassment and
19 psychological torture inflicted by their rapist and his Church.

20 Striking allegations of sexual assault destroys the framework and factual fabric of each
21 Plaintiff’s claims. There would be no stalking claims had each Plaintiff not reported Masterson
22 for sexual assault. The sexual assaults go directly to the issues of the stalking claim because these
23 attacks explain why Masterson instituted the campaigns of stalking in the first place. Every
24 allegation of sexual assault *is* relevant and essential to the Plaintiffs’ stalking claims and damages,
25 so the Complaint sections containing these allegations cannot be stricken.

26 **2. Allegations of sexual assault are relevant and material to Plaintiffs’ claims**
27 **for Physical and Constructive Invasion of Privacy and should not be**
28 **stricken**

Mimicking the structure of his previous objection, Masterson next asserts that because
“[c]learly, sexual assault is not an element of physical invasion of privacy” that allegations of
sexual assault are irrelevant to Plaintiffs’ cause of action for physical invasion of privacy.

1 Masterson, still misusing the standard for a motion to strike, mirrors this flawed reasoning to
2 conclude that any sexual assault allegations related to Plaintiffs' constructive invasion of privacy
3 claim should be stricken.

4 But again, taking the sexual assault allegations as true and in context with the FAC as a
5 whole, these allegations are wholly material and relevant to Plaintiffs' claims for constructive and
6 physical invasion of privacy and damages relating to same for the same reasons mentioned above.

7 The reason that Plaintiffs' included the references to sexual assault, like in the claim
8 discussed above, is to set forth the context and surrounding facts of *why* Masterson began to
9 invade their privacy as well as the harm and injuries suffered by these women as a result of the
10 conduct of their abuser after they reported their sexual assaults to law enforcement. Both of these
11 claims stem from the sexual assaults on Plaintiffs. Masterson did not decide, on a whim, to surveil
12 and invade the Plaintiffs' privacy for no reason. Masterson decided to do so because he sexually
13 assaulted each Plaintiff, and because each Plaintiff then reported his assaults to police. The
14 punishment that was the physical and constructive invasions of privacy would not have occurred
without the sexual assaults occurring first.

15 Where **portions of a complaint subject to strike are essential** to the plaintiff's cause of
16 action, it is error to grant a motion to strike. *See* 43 Cal.2d at 242 (emphasis added)

17 Plaintiffs have shown and made clear, from the beginning of this litigation, that the sexual
18 assaults by Masterson are relevant, material, and essential to their physical and constructive
19 invasion of privacy claims. The Plaintiffs pleaded that they brought their claims due to "the
20 Defendants' conspiracy to cover up that Daniel Masterson **sexually assaulted at least four young**
21 **women. When those women came forward to speak about their assaults** and/or report
22 Masterson' crimes, the Defendants conspired to and systematically stalked, harassed, **invaded**
23 **their and their families' privacy**, and intentionally caused them emotional distress to silence
and intimidate them. (*Complaint* at ¶ 15).

24 These facts must be taken as true. Without referencing the sexual assaults by Masterson,
25 the Plaintiffs have no way to show the factual bases for their claims, including the claims for
26 physical and constructive invasion of privacy. The sexual assault references are therefore essential
27 and relevant to the Plaintiffs' physical and constructive invasion of privacy claims, so these
28 allegations cannot be stricken.

1 **3. Allegations of sexual assault are relevant and material to Plaintiffs' claims for**
2 **Intentional Infliction of Emotional Distress and should not be stricken**

3 Allegations of sexual assault by Masterson and references corresponding police
4 investigations are absolutely relevant and essential to the Plaintiffs' IIED claim. These allegations
5 cannot be stricken.

6 Masterson wrongly claims that because Plaintiffs' IIED claim is not "based on" any sexual
7 assault, that the allegations are irrelevant and immaterial to Plaintiffs' IIED claim. Again
8 needlessly listing *the elements* of the at-issue claim, Masterson fails to consider how the sexual
9 assaults caused, underlie, and frame the claims for IIED. Again, why did Masterson conspire with
10 the other Defendants to inflict emotional distress upon each Plaintiff? It was due to each Plaintiff's
11 reporting Masterson *for sexual assault*.

12 In regard to this IIED claim, as well as the claims above, Masterson seems to forget that
13 this Court must read allegations subject to strike "as a whole, all parts in their context, and assume
14 their truth." 67 Cal.App.4th at 1255 (emphasis added). The context here is clear: the sexual
15 assaults were the factual foundation for them Plaintiffs' IIED claims.

16 The Plaintiffs explained the essentiality of the sexual assault allegations to their IIED
17 claims when they pleaded that when they "came forward to speak **about their assault and/or**
18 **report Masterson's crimes**, the Defendants . . . **intentionally caused them emotional distress**
19 **to silence and intimidate them.**" (*Complaint* at ¶ 15). The allegations of the sexual assault and the
20 subsequent police investigations, which must be taken in context, as a whole, and as true, are
21 essential to establishing the factual basis for the Plaintiffs' IIED claims. Moreover, the level of
22 emotional distress inflicted upon these women after they reported their assaults to law
23 enforcement cannot be appreciated without the facts of the sexual assaults committed by
24 Masterson upon them. The assaults themselves are necessary considerations when evaluating the
25 total amount of harm to Plaintiffs caused by the harassment, intimidation, etc.

26 Masterson has made no showing whatsoever that the sexual assault allegations at issue are
27 irrelevant, immaterial, false, or improper. Without making such showings, Masterson's Motion
28 to Strike cannot succeed.

4. Allegations of sexual assault are relevant and material to Cedric Bixler-
 Zavala's claim for Loss of Consortium and should not be stricken

1 Masterson claims that “because sexual assault is not relevant to any principal cause of
2 action, it cannot be relevant to a cause of action for loss of consortium.” But as explained above,
3 the sexual assault allegations included by the Plaintiffs are in fact entirely crucial and relevant to
4 each of their claims.

5 Mentions of the sexual assaults and the proceeding police investigation of Masterson are
6 likewise material to the Cedric Bixler-Zavala’s claim for loss of consortium. But why did Cedric
7 Bixler-Zavala even experience loss of consortium? It is because his wife, Chrissie Bixler, was
8 stalked, harassed, and surveilled *after she reported Masterson’s sexual assault* on her. Similar to
9 the other Plaintiffs’ claims, the sexual assault by Masterson is included by the Bixler-Zavala
10 Plaintiffs to explain the facts that lead to the loss of consortium.

11 Cedric Bixler-Zavala pleaded that the losses he suffered “were proximately caused by the
12 Defendants’ tortious conduct, as described herein, through which his wife was tortuously injured.”
13 (*Complaint* at ¶ 296). The tortious conduct that had been described therein included the sexual
14 assault by Masterson on Chrissie Bixler. Cedric Bixler-Zavala would not have experienced loss
15 of consortium had Daniel Masterson not sexually assaulted Chrissie Bixler who subsequently
16 reported the assault. As with the other Plaintiffs’ claims, the claim here was caused by the sexual
17 assault, and this claim cannot be sufficiently explained, framed, and proven, without mention of
18 the sexual assault.

19 The claims for stalking, invasion of privacy, infliction of emotional distress, as well as for
20 loss of consortium cannot be factually supported without the inclusion of references to
21 Masterson’s sexual assaults and the subsequent investigations of Masterson. Masterson did not
22 decide to harm these Plaintiffs for random reasons; he did so because each reported his sexual
23 assault to police. Without the sexual assaults and police investigations, the parties would not be
24 here today—these allegations are entirely relevant and material to each of the Plaintiff’s claims.

25 **5. Masterson’s Motion to Strike cannot be granted on the basis of hypothetical**
26 **prejudice that may or may not be created by the material allegations of sexual**
27 **assault**

28 Relying on *People v. Disa*, 1 Cal. App. 5th 654 (2016), Masterson correctly notes that Cal.
Evid. Code § 352 limits the *admissibility* of prior sexual assault convictions as evidence in
criminal trials.

1 But whether a statement is prejudicial pursuant to § 352 is not a proper basis for a motion
2 to strike. Cal. Civ. Proc. Code §§ 435 and 436 provide the basis for Motions to Strike, and
3 nowhere in these statutes does it provides that a term in a complaint should be stricken because it
4 creates prejudice under Evidence Code § 352. As such, Masterson’s Motion to Strike the sexual
5 assault allegations because they are prejudicial should be denied.

6 After misapplying § 352, Masterson resorts to an outright claim that the allegations at
7 issue were included “for the sole purpose of shaming Mr. Masterson into acquiescing to Plaintiffs’
8 outrageous demands.” Not only is this claim patently false, it does not form a proper legal basis
9 for a successful Motion to Strike.

10 Here, Masterson’s request is premature: he argues that because, at a criminal *trial* certain
11 prior bad acts related to sexual assault could be inadmissible, that the same should be stricken
12 *from a civil complaint*. This makes no sense, but Masterson advances it anyway. Masterson’s
13 request is also factually unsupported: he provides no real showing of prejudice and what it would
14 look like for him, does not even attempt to weigh the relevance of such evidence with any
15 potential prejudice, and relies on non-existent factual assertions about the reasons the Plaintiffs
16 included these *essential, relevant, and entirely necessary* references to Masterson’s sexual
17 assaults. Masterson’s Motion to Strike for reasons of prejudice can be denied accordingly.

18 **B. Plaintiffs’ prayers for injunctive relief, punitive/exemplary damages,
19 attorney’s fees, and treble damages are supported by the causes of action
20 pleaded in the complaint and should not be stricken**

21 A motion to strike is proper to strike “a demand for judgment requesting relief not
22 supported by the allegations of the complaint or cross-complaint.” Cal. Civ. Proc. Code
23 §431.10(b)(3) (emphasis added). Here, the allegations and causes of action do support the
24 Plaintiffs’ prayers for relief, and so these prayers cannot be stricken.

25 Masterson’s arguments regarding “inapplicable statutes” is not a basis for a Motion to
26 Strike. Masterson relies on legal conclusions about whether Masterson is a “seller of goods and
27 services” and definitions about who is a consumer or not under Cal. Civ. Code § 1770 and 1780.
28 But here, the only question is *whether the allegations, taken as true, in context, and as a whole,*
support the Plaintiffs’ requests for relief.

Here, however, it is important to note that while the allegations, contrary to Masterson’s
argument, *do* support the prayer for attorney’s fees under California law, “[t]he relief sought in
a prayer for relief is not to be considered as an allegation of the complaint.” *See Walton v.*

1 *Guinn* (1986) 187 Cal.App.3d 1354, 1357, fn. 1; *see also Samuels v. Singer* (1934) 1 Cal.App.2d
2 545, 548 (recognizing that a prayer for relief is not an allegation of the complaint).

3 Although this issue has not been litigated in California courts, federal courts sitting in
4 California have decided the issue under Rule 12(f), holding that because the
5 “prayer for relief section is not a substantive part of the pleading,” striking a prayer for attorney's
6 fees is therefore not proper on a motion to strike. *See Delano Farms Co. v. Cal. Table Grape*
7 *Comm'n* (E.D. Cal. 2009) 623 F.Supp.2d 1144, 1183 (emphasis added). Rather, the appropriate
8 time for the Court to evaluate the entitlement to attorney's fees is at the very
9 least *after* discovery. *See Id.*

10 (1) **Prayers for injunctive relief** is supported by the allegations in the Complaint. An
11 injunction may be granted when:

12 (1) [i]t appears by the complaint that the plaintiff is entitled to the relief demanded, and
13 the relief, or any part thereof, consists in restraining the commission or continuance of the act
14 complained of, either for a limited period or perpetually; or,

15 (2) [w]hen it appears by the complaint or affidavits that the commission or continuance of
16 some act during the litigation would produce waste, or great or irreparable injury, to a party to
17 the action; or,

18 (3) [w]hen it appears, during the litigation, that a party to the action is doing, or threatens,
19 or is about to do, or is procuring or suffering to be done, some act in violation of the rights of
20 another party to the action respecting the subject of the action, and tending to render the
21 judgment ineffectual.

22 Cal. Civ. Proc. Code § 526.

23 The code on which injunctive relief is requested is not sufficient to grant a Motion to
24 Strike; rather, because the allegations and facts set forth in the Complaint implicate the above
25 injunctive relief scenarios, this claim for relief cannot be stricken.

26 First, Plaintiffs are entitled to injunctive relief in order to restrain the continuance of the
27 acts by Masterson and the other Defendants that each pleaded. Each Plaintiff pleaded that
28 Masterson, to this day, continues to harass and stalk them; because the Plaintiffs are entitled to
relief from these acts, injunctive relief can properly be given by this Court. Also, should
Masterson and his agents be allowed to continue such acts, each Plaintiff is placed at great risk of

1 irreparable injury. Therefore, the request for injunctive relief is proper based on the allegations
2 and causes of action, and the request cannot be stricken.

3 **(2) Prayers for punitive damages** are supported by the allegations in the Complaint. In
4 order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing
5 an entitlement to such relief must be pled by a plaintiff. (*Grieves v. Sup. Ct.* (1984) 157
6 Cal.App.3d 159, 166, 203 Cal.Rptr. 556; *Blegen v. Sup. Ct.* (1981) 125 Cal.App.3d 959, 962–
7 963, 178 Cal.Rptr. 470.)

8 Under California law, conclusory allegations should not be stricken where they are
9 supported by other, factual allegations in the complaint. *See, e.g., Perkins v. Sup. Ct.* (1981) 117
10 Cal.App.3d 1, 6-7. (“The allegation that defendants were guilty of ‘oppression, fraud, and malice’
11 simply pleaded a claim for punitive damages in the language of the statute authorizing such
12 damages. [Citation omitted.] **Pleading in the language of the statute is not objectionable when
13 sufficient facts are alleged to support the allegation.**”) While it is true that pleading conclusions
14 of law does not fulfill the requirement under *California Code of Civil Procedure* § 425.10(a), “it
15 has long been recognized that “[t]he distinction between conclusions of law and ultimate facts is
16 not at all clear and involves at most a matter of degree. [Internal Citation.] For example, the courts
17 have permitted allegations which obviously included conclusions of law and have termed them
18 ‘ultimate facts’ or ‘conclusions of facts,’” *Id.* (quoting *Burks v. Poppy Construction, Co.* (1962)
19 57 Cal.2d 463, 467). Further, the Plaintiffs did in fact sufficiently plead the ultimate facts that
20 show entitlement to punitive damages.

21 In order to state a prima facie claim for punitive damages, a complaint must set forth the
22 elements as stated in the general punitive damage statute, Civil Code section 3294. (*Coll. Hosp.,*
23 *Inc. v. Sup. Ct.* (1994) 8 Cal.4th 704, 721, 34 Cal.Rptr.2d 898, 882 P.2d 894.) These statutory
24 elements include allegations that the defendant has been guilty of oppression, fraud or malice.
25 (Cal. Civ. Code, § 3294, subd. (a).) “ ‘Malice’ ” is defined in the statute as conduct “intended by
26 the defendant to cause injury to plaintiff, or despicable conduct that is carried on by the defendant
27 with a willful and conscious disregard for the rights or safety of others.” (Cal. Civ. Code, § 3294,
28 subd. (c)(1); *Coll. Hosp., supra*, 8 Cal.4th at p. 725, 34 Cal.Rptr.2d 898, 882 P.2d 894.) “
‘Oppression’ means despicable conduct that subjects a person to cruel and unjust hardship in
conscious disregard of that person's rights.” (Cal. Civ. Code, § 3294 subd. (c)(2).) “ ‘Fraud’ ” is
“an intentional misrepresentation, deceit, or concealment of a material fact known to the

1 defendant with the intention on the part of the defendant of thereby depriving a person of property
2 or legal rights or otherwise causing injury.” (Cal. Civ. Code, § 3294, subd. (c)(3).

3 Specifically, the Plaintiffs pleaded: “These acts constituted **malicious conduct** which was
4 carried on by said Defendants with willful and conscious disregard for Plaintiffs’ rights with the
5 intention of willfully concealing information that could have prevented sexual assaults against
6 [the Plaintiffs], as well as harassing and silencing Plaintiffs. The conduct at issue was and
7 continues to be despicable and has and continues to subject Plaintiffs to a cruel and unjust
8 hardship and justifies an award of exemplary and punitive damages. Accordingly punitive
9 damages should be awarded against the Defendants to punish them and deter them and other such
10 persons from committing such wrongful and malicious acts in the future.” (*Complaint* at ¶¶ 273,
279, 285, and 293).

11 Because the Plaintiffs’ Complaint set forth each element for a claim for punitive
12 damages—specifically the pleading of malicious conduct—, this prayer for relief is proper and
13 supported by the allegations in the Complaint. The prayer for punitive damages cannot be stricken.
14 If a case where an individual sexually assaults multiple women and then conspires and acts to
15 silence them from coming forward by intimidation, stalking, etc. does not warrant the imposition
16 of punitive damages in California, then no case does.

17 **(3) Prayers for attorney’s fees** are supported by the allegations in the complaint. Here,
18 however, it is important to note that while the allegations, contrary to Masterson’s argument, *do*
19 support the prayer for attorney’s fees, “[t]he relief sought in a prayer for relief is not to be
20 considered as an allegation of the complaint.” *See Walton v. Guinn* (1986) 187 Cal.App.3d 1354,
21 1357, fn. 1; *see also Samuels v. Singer* (1934) 1 Cal.App.2d 545, 548 (recognizing that
a prayer for relief is not an allegation of the complaint).

22 Although this issue has not been litigated in California courts, federal courts sitting in
23 California have decided the issue under Rule 12(f), holding that because the
24 “prayer for relief section is not a substantive part of the pleading,” striking a prayer for attorney’s
25 fees is therefore not proper on a motion to strike. *See Delano Farms Co. v. Cal. Table Grape*
26 *Comm’n* (E.D. Cal. 2009) 623 F.Supp.2d 1144, 1183 (emphasis added). Rather, the appropriate
27 time for the Court to evaluate the entitlement to attorney’s fees is at the very
28 least *after* discovery. *See Id.*

1 Because as explained above a Motion to Strike is not the proper vehicle to address a prayer
2 for attorney's fees (which are not a substantive parts of a pleading), Masterson's Motion to Strike
3 as to Plaintiffs' request for attorney's fees can be denied on this basis.

4 Further, Masterson's efforts to expunge all references to attorney's fees within Plaintiffs'
5 FAC is misguided and misplaced, because his attack on the FAC is premature and
6 attorney's fees under Section 1021.5 are appropriate only after judgment becomes
7 final. *See Unt'd Firefighters of Los Angeles v. City of Los Angeles*, 231 Cal. App. 3d 1576, 1584
8 (1991) ("[Request for section 1021.5 attorney's fees is ancillary to the underlying action and may
be made for the first time after the judgment becomes final....").

9 This case is currently at the pleading stage, and the Court has not yet made the factual
10 determinations necessary to adjudicate a request for attorneys' fee award. Because the Plaintiffs'
11 claims under §§ 1708.5, 1782, 51.7, 52.4, and Civil Procedure §1021.5 are viable and supported
12 by the allegations made in the Complaint, Masterson's Motion to Strike the Plaintiffs'
13 request for attorneys' fees is improper.

14 California statute and case law expressly allows for a request for attorney's fees upon
15 noticed motion and recoverable as costs. *See Allstate Ins. Co. v. Loo* (1996) 46 Cal.App.4th 1794,
16 1797-98 ("[under Code of Civil Procedure section 1033.5, subdivision (a)(10), attorney fees,
17 when authorized by contract, statute, or law, are recoverable as an element of costs" and, as such,
18 need not be pleaded in the complaint); Cal. Civ. Proc. Code § 1021.5 ("Upon motion, a court may
19 award attorneys' fees... in any action which has resulted in the enforcement of an important
20 right..."). Therefore, Masterson's Motion to Strike such attorney's fees is premature, and the
21 allegations pleaded do support a claim for attorney's fees, so the Motion to Strike should be
denied.

22 **(4) Prayers for treble damages** are supported by the allegations in the Complaint. Under
23 Cal. Civil Code § 52.5:

24 (a) A victim of human trafficking, as defined in Section 236.1 of the Penal Code, may
25 bring a civil action for actual damages, compensatory damages, punitive damages,
injunctive relief, any combination of those, or any other appropriate relief. A prevailing
26 plaintiff may also be awarded attorney's fees and costs

27 (b) In addition to the remedies specified in this section, in an action under subdivision (a),
the plaintiff may be awarded **up to three times** his or her actual damages or ten thousand
28 dollars (\$10,000), whichever is greater. In addition, punitive damages may be awarded
upon proof of the defendant's malice, oppression, fraud, or duress in committing the act
of human trafficking.

1
2 Defendant fails to cite any authority to support its position that
3 the treble damages provision in Civil Code § 52.5 is inapplicable to the Plaintiffs' claims. This is
4 because there is no such authority. Plaintiffs have properly alleged entitlement
5 to treble damages under Civil Code §52.5, and Defendant's motion must be denied.

6 This case is currently at the pleading stage, and the Court has not yet made the factual
7 determinations necessary to adjudicate a request for treble damages. Because the Plaintiffs' claim
8 under § 52.5 is viable and supported by the allegations made in the Complaint,
9 Masterson's Motion to Strike the Plaintiffs' request for treble damages is improper.

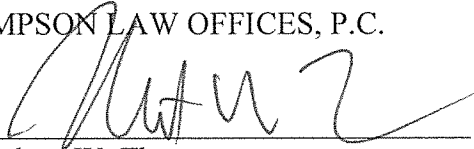
10 Masterson, over and over, seeks summary adjudication via Motion to Strike, which is
11 patently improper. Masterson ignores the pleaded facts and allegations, and makes legal
12 conclusions that Plaintiffs have failed to prove their claims. This is not the proper procedure for
13 addressing the propriety of prayers for relief. As such, Masterson's motion must be denied.

13 **III. Conclusion**

14 Based on the foregoing, Plaintiffs respectfully request that Court deny Defendant
15 Masterson's Motion to Strike in its entirety, and not strike the material and relevant sexual
16 assault allegations, nor mentions of subsequent police investigations, nor the Plaintiffs' prayers
17 for relief.

18 Dated: August 24, 2020

THOMPSON LAW OFFICES, P.C.

19 By: 
20 Robert W. Thompson
21 Attorney for Plaintiffs
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